

CITY OF LEWES

BOARD OF PUBLIC WORKS

Board Meeting Minutes

June 21, 2021

The Monday, June 21, 2021, board meeting of the Lewes Board of Public Works was held at 9:00 A.M at City Hall Council Chambers.

1. WELCOME, CALL MEETING TO ORDER

2. ROLL CALL

Board Members:

D. Preston Lee, P.E.
A. Thomas Owen
Richard Nichols
Earl Webb

Ex-Officio Members:

Darrin Gordon, General Manager
Michael Hoffman, Legal Counsel
Theodore Becker, Mayor

Others Present:

Austin Calaman, Assistant General Manager
Sharon Sexton, Administrative Assistant
Ann Marie Townshend, City Manager
Tim Rizert, City Councilperson
Khalil Saliba, City Councilperson
Andrew Williams, City Treasurer

3. ADJOURN TO EXECUTIVE SESSION

ACTION: President Lee called for a motion. Mr. Owen made a motion to adjourn to executive session, Mr. Nichols seconded the motion, which passed unanimously.

RETURN TO OPEN SESSION

ACTION: President Lee made a motion to return to Open Session, and Mr. Owen seconded the motion, which passed unanimously.

4. Open forum/general discussion of a Memorandum of Understanding with the Mayor and City Council and proposed revision of the Lewes BPW Charter to resolve the conflict between the City of Lewes and the Lewes BPW. INFORMATION/DISCUSSION/ACTION (D. Preston Lee)

Mr. Hoffman stated that last week the Board approved the MOU subject to the addition of properties for Section 10 and a motion to approve Charter Amendment. Mr. Hoffman stated that before the Board is the proposed revision to Section 10 to incorporate the list of properties that have been discussed and approved by the City. The MOU is coming back to the Board to approve, as revised. Mr. Hoffman stated that the formal resolution is before the Board and would approve the Charter Amendment and instruct staff to send Charter Amendment to Senator Lopez and Representative Smyk for the General Assembly's adoption. Mr. Hoffman stated that if the Board wants to move forward with the MOU, Mr. Hoffman can offer a motion.

Mr. Hoffman offered the following motion: Motion to authorize President Lee to execute the MOU as revised with the City of Lewes. Said document, drafted June 21, 2021, v.1 as it was sent to the BPW Council on Friday morning June 18th.

ACTION: Mr. Owen moved; Mr. Nichols seconded.

DISCUSSION: Mr. Nichols stated this Memorandum of Understanding reflects a very careful and studied communication with the Mayor and City Council, as well as our the BPW team and that this achieves what the public wanted, which was to settle and keep moving.

Mr. Webb stated that he was honored to be a part of this process and it was a long process. Mr. Webb recognized prior members of the BPW Board and City Council that were involved in the resolution. Mr. Webb stated it was the will of all the BPW's constituents to get the issue resolved and put it behind the BPW and the City. Mr. Webb stated that the MOU is a document and that we need to continue to improve and work together. Mr. Webb thanked all those involved.

Mr. Owen agrees. Mr. Owen is in favor of the MOU and that it adds an opening to work together with the city and the BPW.

Mr. Panetta was not able to attend the Board meeting and prepared a written statement: President Lee read this statement aloud:

President and members of the Board,

As a member of the negotiating team, for nearly the past three years, I would like to make the following statements. The documents before us are not perfect but are the result of much give and take with the City Council. Neither side got all they wanted. The MOU is a framework for both parties to move forward together in a constructive manner. Preston Lee provided strong leadership under very difficult conditions, and we could have not got there without that. I would like to thank City Council and Mayor for their hard work to get the Charter changes completed so that it can be sent to legislation for action. And a heartfelt thanks to Senator Lopez and Representative Smyk for their facilitation and patience with all of us. I can truly say that without their efforts this would not have been successful. These documents are the foundation for both organizations to rebuild trust and to focus on the needs of our ratepayers

and citizens. We also need to acknowledge the stress on the staff of the BPW as they continued to provide the quality of service that the BPW is known for. We owe them our thanks and gratitude. To the public, your voice was heard. I think I can speak for both parties and say that your voice was heard, and we focused on the areas that are your main concerns. I whole heartily endorse the MOU and Charter changes.

President Lee agrees with everything said. President Lee stated that unfortunately this has taken a long time to get here, but the BPW and the City have listened to its citizens and ratepayers and resolved this matter. President Lee appreciates the mayor and the council for the hard work and determination to get this completed. President Lee stated that this Board has worked very hard and appreciates Tom Panetta in negotiations and Carolyn Jones. They were a testament in getting the job done and they came in with a positive attitude to get this matter resolved once and for all. President Lee also thanked Representative Smyk and Senator Lopez for facilitating those negotiations and supporting the Board without bias throughout this process. President Lee stated that he is looking forward to getting back to where they used to be. The Board and the City had many good years where they worked well together. President Lee believes this is the first step in getting back to that position. President Lee thanked all members.

Mr. Hoffman stated there were two options for a vote: either a voice vote or poll vote.

Action: President Lee called for a poll vote for the MOU.

Action: Richard Nichols votes in favor of MOU for the reasons were recently heard.

Action: Earl Webb votes yes for the approval.

Action: Thomas Owen votes yes.

Action: President Lee votes yes for the reasons mentioned before.

The motion passed unanimously.

Mr. Hoffman stated that the Board approved the Charter Amendment language last week and the City Council approved as presented with no changes. Mr. Hoffman stated that the resolution will be the vehicle to send the charter Amendment to Dover for the consideration.

ACTION: Mr. Owen motioned to read the resolution in full and placed for consideration, Mr. Nichols seconded the motion.

Mr. Hoffman read the Resolution 21-004.

Mr. Hoffman read Exhibit A- An act to amend the charter.

ACTION: Mr. Owen made a motion to adopt resolution 21-004, Mr. Webb seconded, which passed unanimously.

Mayor Becker thanked the BPW Board on behalf of City Council for all the work and efforts to make this move forward and looks forward to a long mutual beneficial relationship.

5. Open forum general discussion for the consideration and approval of the Lewes Senior Living and Lewes Attainable Housing (Dutchman's Harvest and Historic Lewes Senior Living) developers' agreement. INFORMATION/DISCUSSION/ACTION (D. Gordon/M. Hoffman)

Mr. Gordon stated that we have been working with Dutchman's Harvest/Senior Living for a while. Mr. Hoffman stated that the development agreement for the Senior Living and Dutchman's Harvest is before the Board. Mr. Hoffman stated this is the development agreement form that the Board has seen in the past and has been revised based on the details, which the BPW typically does. Mr. Hoffman stated that this agreement does involve items with the City and has been sent to Glenn Mandalas for changes of the document and it is now ready to be approved. Mr. Hoffman stated that this agreement will need to be approved by the Board and then sent to be approved by City Council.

Mr. Nichols questioned if this is the standard agreement form used in the past and has been successful in the past. Mr. Hoffman confirmed that it is the same form with differences pertaining to offsite utilities and prorate of cost sharing, and those details. As far as bonding and enforcement remedies, this agreement is our standard form.

Mr. Gordon stated that on page four, item 2.6 there will be some immediate work on corner of Atlantic and Savannah that will run under the road to Donovan Smith Trailer Park. This is where the main lift station will be, and they will share the cost. Item 2.1 references impact fees, like we have done at other developments in the past. Mr. Gordon stated that these numbers came from Charlie O'Donnell and GMB. Dutchman's Harvest is affordable housing development and the City has helped with cost done by shifting some of the cost per Preston Schell. Mr. Gordon states that these are the numbers that the BPW will be collecting in future and will make the BPW whole. Mr. Gordon stated that the project will take about 8 months to complete on Donovan's Road and across Savannah Road. The BPW should start seeing payment immediately following construction start. Mayor Becker questioned when the project will start. Mr. Gordon stated that it will probably begin in two and half months and he expect the lift station work to begin in fall. Mr. Gordon stated the BPW will need to go to the bid process.

Action: Mr. Webb motioned to accept the agreement. Mr. Owen seconded motion, which passed unanimously.

6. Open forum/general discussion for the consideration and approval of the Lewes Waterfront Preserve Development agreement. INFORMATION/DISCUSSION/ACTION (D. Gordon/M. Hoffman)

Mr. Hoffman stated that the document before the Board started as the standard form development agreement and has been revised for the specific terms related to the offsites but is otherwise is our standard form. Mr. Hoffman suggested that any motion made should authorize

staff to work with developer to complete the recitals, the highlighted portions on the first page. Once approved by the Mayor and City Council, the recitals can be completed.

Mr. Gordon stated that Tower Hill is on the opposite side of Canary Creek and the BPW will have to use a directional drill under Canary Creek to provide sewer, water, and electric. Currently Tower Hill is doing the very same thing, except they do not need electric, as they will be served by the Delaware Electric Co-Op.

Mr. Gordon stated that the BPW has given Waterfront Preserve will serve letter, but they are concerned they will not get their utilities in time. Mr. Gordon stated that the agreement before the Board says it is the developer's responsibility to get the utilities across. The will serve letter states that the BPW has the capacity to serve them, and the BPW does. Waterfront preserve has two options: Waterfront Preserve can be patient and work with Tower Hill to partner in with the pipe or they can do it themselves. Waterfront Preserve is working with Tower Hill. Mr. Gordon states that this protects the BPW, Waterfront Preserve is paying the entire cost of the utility for the electric conduit to be put in and paying their share of the prorate for water and sewer. Mr. Gordon stated that the impact fees will be coming in when constructed and built. Mr. Gordon stated this is consistent with what other developers are doing and that protection for the BPW is there.

Mr. Hoffman stated that as a general approach, when it comes to offsites it is the developer's responsibility to extend utilities. The construction and the expansion cost is on the developer. Mr. Hoffman stated that this is a unique situation as Tower Hill is scheduled to construct the extension of the utilities first and Waterfront Preserve will benefit from that. Our position is that Waterfront Preserve can pay prorate of share if Tower Hill moves forward and if Tower Hill does not Waterfront Preserve has the obligation to extend the utilizes, as any other developer does. Mr. Hoffman referred to section 2.7: *The BPW makes no representation and offers no commitment regarding the timing of said installation of infrastructure.*

The BPW does agree to take commercially reasonable steps to enforce the obligations and expectations within the Tower Hill agreement. If Waterfront Preserve is ready to begin before Tower Hill, it is still Waterfront Preserve's obligation to get those utilities to the front of their property.

President Lee questioned the if easements are an issue and who is responsible for obtaining them. Mr. Gordon stated that we are participating with Tower Hill and working to obtain easements with them. Mr. Gordon stated that if Waterfront Preserve were to begin sooner, they would be responsible to obtain the easements themselves. Mr. Owen questioned who would own the easement and Mr. Gordon replied that the easement would be in the BPW's name. President Lee questioned what would happen if we were unable to obtain easement. Mr. Hoffman stated that this is very similar to the way Deldot operates and the developer cannot connect until the utilities are constructed at a point where they connect, at the easement. The easements must be acquired and the BPW will participate, but it is not the BPW's obligation. Mr. Hoffman stated that if the developers get jammed up, it will affect the timing of the project. Mr.

Owen questioned if Deldot is responsible to get the easements and Mr. Hoffman stated no, there is a multi-layer approach. The developer is responsible for the first step, direct negotiation, and the BPW will assist in that effort. President Lee questions liability of easements. Mr. Hoffman stated that the BPW's position is that we have capacity, and will provide that capacity when the extension, which is the developers obligation, is complete.

Mr. Owen questioned who is Waterfront Preserve getting the easement from. Mr. Gordon stated that is Pilottown Reserve and they own easement of property out to 50% of canary creek. Mr. Owen questioned if we are using Pilottown Reserve land for this easement. Mr. Gordon stated yes and the BPW is planning to ask for a corner piece from the City/State, on New Road that Mr. Gordon does not see nearly as problematic. The BPW has had discussions with the HOA President of Pilottown Reserve, and the HOA is asking for the plan that has been approved by DelDot. DelDot does not have that plan complete yet, that includes bridge construction and design and approval of the BPW's design. Mr. Gordon stated that both developers are aware that once the BPW has the Deldot plan, the BPW will take it back to the Pilottown Reserve HOA. Mr. Owen stated that the BPW will not do anything until an easement in place.

Mr. Gordon stated that the BPW will encourage Pilottown easement and that the City will be the last resort if unable to obtain the easement. Mr. Gordon stated that the work will be completed with directional drill, no disturbance of land besides a few pits, public will not see pipe, and the environment will not be harmed. Mr. Webb questioned if there were concerns about expansion of the wastewater treatment plant to accommodate the initial flow. Mr. Gordon stated not at this time. The BPW has other costs associated with maintenance. Mr. Gordon stated that the plant is a 1.5 mgd plant and the BPW has seen it operate at 1.7 mgd without issue. Mr. Calaman stated that we have additional capacity to add 4%. Mr. Owen stated there is no issue capacity wise.

President Lee questioned the biological process. Mr. Gordon stated that with the additional drying beds, it is handling of the mixed liquid suspending solids, the amount of Biological Oxygen Demand coming in, the plant can handle capacity coming in. President Lee stated that we have ability to increase capacity, however that is after biological process. President Lee is concerned about the sludge capacity for maximum filtration.

Mr. Webb questioned if Waterfront Preserve will have to pay if additional capacity is needed. Mr. Gordon stated that the impact fees include cost if we need to create a higher capacity at wastewater treatment plant. Mr. Gordon stated that the numbers come from GMB not the BPW. Mr. Gordon stated that the impact fees include cost of production and distribution as well maintenance from the pipes to filters.

Mr. Webb questioned if there are concerns with a water tower in that area. Mr. Gordon stated that the BPW is planning to build a tank on Jones Farm and a well on the Tower Hill site. Mr. Gordon stated that the BPW wants the well in service and operating as quick as we can. President Lee stated that there will be a treatment plant as well and it must have capacity of the

pressure of the rest of the distribution center. Mr. Gordon stated that GMB is looking at possibility of temporary tanks for fire flow, etc.

Mr. Webb question if there was any concern of saltwater intrusion in that area. Mr. Gordon stated that when the area was tested there was no saltwater intrusion, and the area is close to wetlands.

Mayor Becker questioned in terms of an easement- who is going first? Mr. Hoffman stated that Tower Hill is going first. Mr. Hoffman read from the agreement.

Developer acknowledges that the BPW System Connections and related infrastructure are being constructed by a third-party entity pursuant to that certain Tower Hill Development Agreement, etc.

Mr. Hoffman continued that the BPW does not offer and commitment or guarantee but the understanding is that Waterfront Preserve understands that Tower Hill is going first, and they are paying a prorated share. Mayor Becker stated that Waterfront Preserve will need an electric easement as well and that it makes sense to complete this work all at one time. Mr. Gordon stated that the BPW would like a 40-foot easement for all three utilities. Mayor Becker stated that Waterfront Preserve and Tower Hill must be in partnership with the easement.

Mr. Hoffman stated that the BPW has been spearheading conversations for cooperation and coordination with the intention of doing the work at the same time. Mr. Gordon stated that we had pushback, Delaware Electric Co-Op wanted to use easement as well for electric conduit.

Mayor Becker questioned if Chesapeake was involved into the easement discussion as well as telecommunication networks. Mr. Gordon stated that they are involved. Mr. Hoffman stated the BPW does have a broad utilities easement. President Lee stated that these utilities companies should be aware of the development. Mayor Becker stated that he is unaware that Chesapeake has been involved in the discussion. Mr. Gordon stated that the utility companies have brought to the table. Mayor Becker stated that six utilities need to go through there, in hopes to serve all these people. Mr. Gordon stated that Deldot, Chesapeake, Tower Hill, AT&T and Comcast have been invited to have discussion. Mr. Hoffman stated that this document cross references the improvement plans in the detail who is responsible for easements and the timing when those improvements that needs to be in place. Mr. Hoffman states that these conversations should be happening as planning continues. Mayor Becker stated that Deldot does not plan to release primary drawings until July. Mr. Owen stated that the BPW will be asked to approve the agreement before the Board and Mr. Hoffman stated that this document is the framework is to memorials of expectations relative to obligations. Mr. Hoffman stated that message of this discussion is that getting the utilities to the community responsibility of the developers.

Mr. Hoffman reference Page 1, the highlighted portions are not completed because final approval from the Mayor and the City Council has not been granted. Mr. Hoffman stated that the plan is recorded and insert the recording information into highlighted portions.

ACTION: Mr. Owen moved to authorized General Manger to work with Board attorney and the developer to finalize recitals and to authorize Board President Lee to execute the Lewes Waterfront Development Agreement presented to the Board on this day, June 21.2021. Mr. Nichols seconded, which passed unanimously.

7. ADJOURNMENT

The meeting adjourned at 12:13 P.M.

Respectfully Submitted,
Sharon Sexton
Administrative Assistant